

**THE FAYETTE COUNTY PLANNING COMMISSION** held a **Public Meeting/Workshop** on January 19, 2012, at 7:00 P.M. in the Fayette County Administrative Complex, 140 Stonewall Avenue West, Board of Commissioners Conference Room, Suite 100, Fayetteville, Georgia.

**MEMBERS PRESENT:** Tim Thoms, Chairman  
Al Gilbert, Vice-Chairman  
Bill Beckwith  
Jim Graw  
Douglas Powell

**STAFF PRESENT:** Pete Frisina, Director of Community Development  
Dennis Dutton, Zoning Administrator  
Phyllis Williamson, P&Z Administrative Secretary

**STAFF ABSENT:** Robyn S. Wilson, P.C. Secretary/Zoning Coordinator

**OTHERS PRESENT:** Jennifer Blackburn, Troutman Sanders LLP

**Welcome and Call to Order:**

Chairman Thoms called the Public Meeting/Workshop to order and introduced the Board Members and Staff.

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**1. Election of a Chairman for 2012.**

Doug Powell nominated Tim Thoms for Chairman. Al Gilbert seconded the nomination. Al Gilbert made a motion to close the floor for nominations. Doug Powell seconded the motion. The motion to close the floor for nominations unanimously passed 5-0. Members voting in favor of the motion to close the floor for nominations were: Tim Thoms, Al Gilbert, Bill Beckwith, Jim Graw, and Doug Powell. The motion to elect Tim Thoms, as Chairman for 2012, unanimously passed 5-0. Members voting in favor of Tim Thoms as Chairman for 2012 were: Chairman Thoms, Al Gilbert, Bill Beckwith, Jim Graw, and Doug Powell.

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**2. Election of a Vice-Chairman for 2012.**

Doug Powell nominated Al Gilbert for Vice- Chairman. Bill Beckwith seconded the nomination. Doug Powell made a motion to close the floor for nominations. Bill Beckwith seconded the motion. The motion to close the floor for nominations unanimously passed 5-0. Members voting in favor to

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close the floor for nominations were: Chairman Thoms, Al Gilbert, Bill Beckwith, Jim Graw, and Doug Powell. The motion to elect Al Gilbert, as Vice-Chairman for 2012, unanimously passed 5-0. Members voting in favor of Al Gilbert as Vice-Chairman for 2012 were: Chairman Thoms, Al Gilbert, Bill Beckwith, Jim Graw, and Doug Powell.

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**3. Election of a Secretary for 2012.**

Al Gilbert nominated Robyn Wilson for Secretary. Doug Powell seconded the nomination. Bill Beckwith made a motion to close the floor for nominations. Jim Graw seconded the motion. The motion to close the floor for nominations unanimously passed 5-0. Members voting in favor to close the floor for nominations were: Chairman Thoms, Al Gilbert, Bill Beckwith, Jim Graw, and Doug Powell. The motion to elect Robyn Wilson, as Secretary for 2012, unanimously passed 5-0. Members voting in favor of Robyn Wilson as Secretary for 2012 were: Chairman Thoms, Al Gilbert, Bill Beckwith, Jim Graw, and Doug Powell.

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**4. Consideration of the Public Hearing Minutes of the meeting held on November 3, 2011.**

Chairman Thoms asked the Board Members if they had any comments or changes to the Public Hearing Minutes. Al Gilbert made the motion to approve the Minutes. Bill Beckwith seconded the motion. The motion unanimously passed 5-0. Members voting in favor of the Public Hearing Minutes were: Chairman Thoms, Al Gilbert, Bill Beckwith, Jim Graw, and Doug Powell.

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**5. Consideration of the Public Meeting/Workshop Minutes of the meeting held on November 17, 2011.**

Chairman asked the Board Members if they had any comments or changes to the Public Meeting/Workshop Minutes.

Doug Powell made the motion to approve the Public Meeting/Workshop Minutes. Jim Graw seconded the motion. The motion unanimously passed 5-0. Members voting in favor of the Public Meeting/Workshop Minutes were: Chairman Thoms, Al Gilbert, Bill Beckwith, Jim Graw, and

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Doug Powell.

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### 6. Discussion of proposed amendments to the Fayette County Code of Ordinances, Chapter 20. Zoning Ordinance regarding: Telecommunication Antennas and Towers.

Pete Frisina asked if the PC had listened to the Minutes from the BOC Workshop. He explained the BOC seemed to be pretty much in agreement with the amendments being presented to the PC tonight. He presented the proposed amendments as follows:

#### ARTICLE III. DEFINITIONS

*Tower, Planned.* Any tower that is in the public hearing procedure, site application review process, or has been approved, but not yet constructed (see Article V.)

#### ARTICLE V. GENERAL PROVISIONS

##### **Sec. 5-47. Standards for Telecommunications Antennas and Towers.** (Amended 05/26/11)

- A. *Purpose and Intent.* The purpose of this ordinance is to establish minimum development standards for the regulation of commercial telecommunications transmission towers, including, but not limited to: cellular and Personal Communications Systems (PCS) towers, broadcasting towers, two-way radio towers, fixed-point microwave dishes, commercial satellites and receiving dishes, and related equipment cabinets and/or buildings. The intent of this ordinance is: (1) to implement the provisions of the Telecommunications Act of 1996, on a local level; (2) to control placement of towers and antennas in a way that minimizes the adverse visual impact to nearby properties by locating towers and antennas in non-residential areas or in areas where the adverse impact on the community is minimal; and (3) to advocate the shared use of new and existing tower sites through co-location, thereby discouraging the proliferation of towers throughout Fayette County.
- B. *Authority.* Only the Board of Commissioners has the authority to reduce or waive the requirements under this section through the public hearing procedure.
- C. *Applicability.*
  - 1. *District Height Limitations.* Height limits specified for each zoning district shall not apply to towers and antennas. The requirements set forth herein shall govern the height of towers and antennas.
  - 2. *Governmentally Owned Property.* These requirements shall not apply to any governmentally owned property, including: properties owned by the Board of Commissioners, Board of Education, or a municipality, as well as, the State or Federal government, that are used for the location of any tower facility.
  - 3. *Amateur Radio Antennas.* This ordinance shall not govern any amateur radio tower, or the installation of any antenna, that is less than 70 feet in height and is owned and operated by a

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- federally-licensed amateur radio station operator.
4. *Pre-Existing Towers and Antennas.*
- a. Any tower or antenna which existed prior to December 10, 1998, **(may need a new date?)** that does not comply with the requirements herein shall be deemed legally nonconforming. Any enlargement of a pre-existing tower or tower facility, shall meet the requirements herein. Co-location of an antenna which does not increase the height of the tower or placement of additional equipment cabinets or buildings within the existing tower facility shall be allowed under the provisions of Site Plan Requirements.
  - b. Replacement of a pre-existing legally nonconforming tower structure is permitted provided that all of the following apply:
    - i. The replacement tower is constructed within 25 feet of the existing tower and is not greater in height than the existing tower.
    - ii. The tower being replaced is removed from site within 90 calendar days from the issuance of the Certificate of Occupancy for the replacement tower;
    - iii. Additional co-location opportunities on the new tower are made available with the minimum users required based on tower height; and
    - iv. A site plan indicating the location of the replacement tower shall be required.
- D. *General Requirements.*
- 1. Towers and tower facilities shall be on a lot which meets the minimum ~~lot size~~ requirements for the zoning district in which it is located. Towers and tower facilities may be located on a lot containing another use. Towers and tower facilities may occupy a leased area being a portion of the lot.
  - 2. Internal setbacks for towers, tower facilities, and anchors shall be measured to the boundaries of the lot, not the boundaries of the leased area. Setbacks for towers shall be measured from the base of the tower.
    - a. All towers shall be set back from all adjoining properties zoned residential or A-R a distance equal to the height of the tower plus 10 feet.
    - b. All towers shall be set back from all adjoining properties zoned non-residential a distance of 100 feet.
    - c. All towers shall be set back from the street right-of-way (existing or required) a distance equal to the height of the tower. Street right-of-way is based on the classification of the street (see County Code, Development Regulations.)
    - d. All towers, excluding alternative tower structures, shall be set back from any off-site residence a distance equal to three (3) times the tower height or a minimum of 500 feet, whichever is greater.
    - e. Any tower facility and anchors for guyed towers shall comply with the minimum required setbacks and/or buffers of the applicable zoning district.
    - f. **All towers shall be set back from all adjacent municipalities and counties a minimum distance of 1,000 feet.**

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Pete Frisina stated that the consensus from the BOC Workshop was to reduce the distance from one half (0.50) mile to 1,000 feet.

3. Towers located on the same lot as a private school or day care center shall be set back a distance equal to the height of the tower from all facilities, excluding parking areas. This provision shall not apply to an alternative tower structure which is allowed in conjunction with a Private School Conditional Use.
4. All towers, excluding alternative tower structures, shall be structurally designed to accommodate the following minimum numbers of carriers based on height of the tower:
  - a. up to 70 feet : one (1) carrier;
  - b. greater than 70 up to 120 feet : two (2) carriers;
  - c. greater than 120 feet up to 150 feet : three (3) carriers;
  - d. greater than 150 feet up to 180 feet : four (4) carriers;
  - e. greater than 180 feet up to 250 feet : five (5) carriers; and
  - f. greater than 250 feet: six (6) carriers.
5. All tower facilities, excluding tower facilities associated with alternative tower structures, shall be enclosed by a steel chain link fence not less than eight (8) feet in height, with slat inserts for screening. Access to the telecommunication tower shall be through a locking gate. In addition, a minimum of three (3) strands of barbed wire shall be used along the top of the fence to prevent unauthorized access to the tower.
6. A landscaped strip 10 feet in width surrounding the perimeter of the tower facility shall be required. Landscaping shall be staggered double rows of evergreen trees a minimum of six (6) feet in height when planted and spaced every 10 feet on center. Landscaping shall be installed on the outside of the required security fence. Existing mature tree growth and natural land forms on the site shall be preserved to the maximum extent possible. In some cases, such as towers sited on large wooded lots, the Zoning Administrator may determine that natural growth around the property perimeter may be sufficient in lieu of the required landscaping. If existing vegetation is to remain and requested to count toward the landscaping requirements, all such information, including location, size, and type of vegetation shall be indicated on the site/landscape plan. These requirements shall not apply to a tower facility associated with an alternative tower structure.
7. Maximum height for all towers and antennas is 500 feet. Tower height shall be measured from the natural grade of the ground at the location of the tower to the highest point of the tower, including any antenna. If minimal grading (elevation of one [1] to two [2] feet above natural grade) is required to level the ground for the tower base, tower height shall be measured from the finished grade approved by the County Engineer.
8. No signage shall be placed on a tower structure or antenna.
9. ~~Inventory of Existing or Planned Tower Sites. No new tower shall be permitted unless the applicant demonstrates to the satisfaction of the County that no existing tower or any planned towers can accommodate the applicant's proposed antenna. All evidence shall be signed and sealed by appropriate licensed professionals or qualified industry experts. All of the following shall be required to sufficiently demonstrate that no existing or planned tower can accommodate the proposed antenna:~~

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- a. ~~Each applicant for a new tower and antenna shall contact the owners of all existing and planned tower sites, including those located within the zoning jurisdictions of municipalities and/or other counties, that are within the search area of the applicant's proposed tower or antenna location, and provide the Planning and Zoning Department with an inventory of said tower sites at the time of application submittal.~~  
The inventory shall include the following information:
    - i. All tower owners and the number of carriers for each tower site;
    - ii. The site location, total height, and design type of each tower;
    - iii. Details of all existing and planned towers or structures located within the search area and the ability of such to meet the applicant's engineering requirements, including, but not limited to: sufficient height, structural
    - iv. Other limiting factors that render existing towers and structures unsuitable; and
    - v. Letters of rejection for requests to co-locate on all existing and planned towers within the service area of the proposed tower.
  - b. ~~The Planning and Zoning Department may share such information with other applicants applying for approval under this ordinance or other organizations seeking to locate antennas within the jurisdiction of the governing authority, provided; however, that the Planning and Zoning Department is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.~~
  - c. ~~If it is determined that the applicant cannot feasibly locate an antenna on an existing tower or planned tower, the applicant shall demonstrate that the proposed new tower is designed to accommodate the required number of carriers.~~
10. *Aesthetics and Lighting Requirements.* The following compatibility standards shall govern the aesthetics and lighting of any tower facility, including the installation of antennas on towers.
- a. Towers shall either maintain a galvanized steel finish or, subject to any applicable standards of the FAA, be painted a neutral color, so as to reduce visual obtrusiveness.
  - b. If an antenna is installed on a structure other than a tower, the antenna and equipment cabinets shall be architecturally compatible with, the color and texture of the supporting structure. Roof mounted equipment cabinets shall be screened so as to make the equipment visually unobtrusive.
  - c. Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the governing authority may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views.
11. ~~*Federal Requirements.* All towers shall meet current standards and regulations of the Federal Aviation Administration (FAA), the Federal Communications Commission (FCC), and any other agency of the federal government with the authority to regulate towers and antenna, including modulation studies on frequency usage, to avoid interference with existing systems in operation.~~

- ~~12. *Building Codes and Safety Standard Requirements.* To ensure the structural integrity of towers, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable local building codes and the applicable standards for towers that are published by the Electronic Industries Association, as amended. If, upon inspection, the governing authority concludes that a tower fails to comply with such codes and standards or that such tower constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have 60 days to bring such tower into compliance.~~
  13. *Removal of Abandoned Antennas and Towers.* Prior to the abandonment of any tower or antenna, a copy of the notice of Intent to Abandon required by the FCC shall also be submitted to the Fayette County Planning and Zoning Department. Any antenna or tower, including pre-existing towers and antennas, that is not in use for a continuous period of 12 months shall be considered abandoned, and the owner of such antenna or tower shall remove same within 90 days of receipt of notice from the governing authority notifying the owner of such abandonment. If there are two (2) or more users of a single tower, then this provision shall not become effective until all users cease using the tower.
  14. *Performance Bond Required.* Prior to the issuance of a Certificate of Occupancy for a new tower structure, every applicant shall be required to deposit a performance bond with Fayette County. The amount of the bond shall be equal to 10 percent of the total construction cost or a minimum of \$5,000, whichever is greater. Such bond shall be required upon compliance with all aspects of this section and shall be applicable to any assignee and owner of any permit granted hereunder, or any employee, contractor, subcontractor, or other party performing services in connection with any Certificate of Zoning Compliance issued by the Planning and Zoning Department. The required performance bond shall be released only upon demolition of the tower and restoration of the site to the pre-development conditions. The approved format of the bond is available in the Planning and Zoning Department.
- E. *Supplemental Requirements.* In addition to the General Requirements above, the following Supplemental Requirements shall apply as specified below.
1. *Highway Corridor.* Locating towers along the following highway corridors is permitted as an overlay zone provided all the following requirements are met:
    - a. The State and County Highways included within the Highway Corridor are S.R. 54, S.R. 85, S.R. 92, S.R. 74, S.R. 314, S.R. 279, S.R. 138, and 85 Connector.
    - b. The Highway Corridor tower overlay zone permits towers in any zoning district when located within 1,000 feet of the right-of-way on either side of the aforementioned roads in unincorporated areas of Fayette County.
    - c. Towers in excess of 250 feet in height in the Highway Corridor shall require public hearings before the Planning Commission and Board of Commissioners.
    - d. All new towers, excluding alternative tower structures, located within the Highway Corridor that are 70 feet or greater in height shall not be located within one (1) statute mile from any existing or planned towers (within any local government jurisdiction) that are 70 feet or greater in height. This minimum distance requirement shall not apply from existing governmentally-owned towers where co-location is not permitted or from alternative tower structures.

2. *Outside of the Highway Corridor.*
  - a. Outside of the Highway Corridor, a tower may be located only in the following zoning districts:  
Manufacturing and Heavy Industrial District (M-2);  
Light Industrial District (M-1);  
Highway Commercial District (C-H);  
Community Commercial District (C-C);  
Agricultural Residential (A-R); and  
R-70 Single-Family Residential District.
  - b. Towers in excess of 180 feet in height outside of the Highway Corridor shall require public hearings before the Planning Commission and Board of Commissioners.
  - c. All new towers, excluding alternative tower structures, located outside of the Highway Corridor that are 70 feet or greater in height shall not be located within one and one-half (1.50) statute miles from any existing or planned towers (within any local government jurisdiction) that are 70 feet or greater in height. This minimum distance requirement shall not apply from existing government-owned towers where co-location is not permitted or from alternative tower structures.
3. *Alternative Tower Structures.*
  - a. The purpose of an alternative tower structure is to diminish, camouflage, or conceal the appearance of towers and antennas to reduce the visual impact on surrounding properties and streets. Depending on the nature of the site, the proposed alternative tower structure shall be appropriate and in character with its surroundings. For example, the use of a monopine is more fitting on a site with stands of mature trees; whereas, the use of a flag pole or light pole alternative tower structure is more suitable for the developed portion of a site.
  - b. Alternative tower structures shall comply with the General Requirements herein with the exception of the setback requirements from off-site residences, security fencing requirements, landscape requirements, and tower separation requirements of both the Highway Corridor and outside of the Highway Corridor. Alternative tower structures shall be allowed in the Highway Corridor, outside of the Highway Corridor in the zoning districts listed herein, and in conjunction with the following existing Conditional Uses:
    - i. Church or Other Place of Worship;
    - ii. Developed Residential Recreational/Amenity Areas;
    - iii. Private School; and
    - iv. Telephone, Electric, or Gas Sub-Station or Other Public Utility Facilities.
  - c. Alternative tower structures, in conjunction with the above listed Conditional Uses, shall meet the setbacks established in the General Requirements or the Conditional Use setbacks, whichever is greater.
  - d. An alternative tower in excess of 120 feet in height shall require public hearings before the Planning Commission and Board of Commissioners.
  - e. A maximum of one (1) alternative tower structure shall be allowed per lot.



- f. The alternative tower structure shall match the visual simulation depiction and engineering detail and specification drawings from the manufacturer/supplier of the alternative tower structure specifically proposed for the site.
- g. *Design Review and Approval Process:* Alternative tower structures shall go through a Design Review and Approval Process before the Planning Commission. The purpose of this Design Review and Approval Process is to determine that the alternative tower structure type is appropriate for the site and surrounding area and set requirements for the alternative tower structure type, placement on the site, equipment structures, fencing and landscaping. The Design Review and Approval Process application shall include the following:
  - i. An analysis of the nature and character of the site and how the alternative tower structure is appropriate in context to the site and the view from surrounding properties and streets;
  - ii. A visual simulation consisting of color photographs of the proposed site with the existing view and with a depiction of the proposed tower, from a minimum of four (4) distinct quadrants (generally north, east, south, and west), to demonstrate the visual impact on surrounding properties and streets; and
  - iii. Engineering detail and specification drawings from the manufacturer/supplier of the alternative tower structure specifically proposed for the site which shall indicate all applicable requirements herein.
- h. *Monopine Towers.*
  - i. Monopine towers shall maintain the natural conical appearance of a loblolly pine tree. Antennas shall be placed a minimum of five (5) feet below the top of the tower, as measured from the highest point of the antenna to maintain said appearance.
  - ii. Foliage shall be green in color and the tower shall be brown in color. The antennas shall be green to blend with the foliage and the foliage shall extend a minimum of one (1) foot beyond the antennas. The foliage shall be UV resistant to reduce degradation and fading and constructed to withstand winds of 110 MPH, certification of such shall be supplied with the application. Foliage shall be placed on the tower down to the height of the foliage of surrounding trees. The structure shall have sufficient limbs at the time of initial installation so that there is no gap between the existing canopy and the lower most limbs of the monopine.
  - iii. The installation of the foliage on the monopine shall be installed prior to final inspections. Foliage on the monopine shall be maintained and/or replaced to the specifications established by the engineering detail and specification drawings from the manufacturer/supplier of the alternative tower structure specifically proposed for the site to retain the screening of the antennas. Upon notice from the County that the foliage is in need of

maintenance and/or replacement, the tower owner shall have 90 days to make such repairs.

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- iv. Flag pole and light pole alternative tower structures shall utilize internal antennas and slick stick design. Flag poles utilized as an alternative tower structure shall be exempt from Article V. *General Provisions, Structures Permitted above the Height.*
- F. *Public Hearings Required to Reduce or Waive Requirements.*
  - 1. Public hearings before the Planning Commission and Board of Commissioners are necessary to reduce or waive requirements for a proposed tower, antenna, or equipment cabinet or building that cannot comply with the General Requirements, and/or Supplemental Requirements. The procedure for said public hearings shall follow the procedure for rezoning (see Article XI.) Applicants shall apply for public hearings through the Planning and Zoning Department. The application with deadline submittal and public hearing dates is available in the Planning and Zoning Department. The application shall include the following:
    - a. A scaled Concept Plan, drawn on the signed/sealed survey, graphically indicating the lot and leased area, total tower height including antennas, type and design of the tower structure, the boundary of the tower facility, all applicable setbacks (both on and off-site), ingress/egress, landscaping areas, and zoning of the subject property and adjacent property;
    - b. ~~An Inventory of Existing or Planned Tower Sites per the standards listed under Supplemental Requirements~~ *Inventory of Existing or Planned Tower Sites. When a proposed tower cannot meet the separation requirements between towers, an Inventory of Existing or Planned Tower Sites shall be required to sufficiently demonstrate that no existing or planned tower can accommodate the proposed antenna. Each applicant for a new tower shall contact the owners of all existing and planned tower sites, including those located within all adjacent municipalities and counties, that are within the search area of the applicant=s proposed tower location. All evidence shall be signed and sealed by appropriate licensed professionals or qualified industry experts. The inventory shall include the following information:*
      - i. All tower owners and the number of carriers for each tower site;*
      - ii. The site location, total height, and design type of each tower;*
      - iii. Details of all existing and planned towers or structures located within the search area and the ability of such to meet the applicant=s engineering requirements, including, but not limited to: sufficient height, structural support strength, and electromagnetic interference with antenna(s) on the existing towers or structures;*
      - iv. Other limiting factors that render existing towers and structures unsuitable; and*
      - v. Letters of rejection for requests to co-locate on all existing and planned towers within the service area of the proposed tower.**The County will engage an independent expert review of the Inventory of Existing and Planned Towers. If the actual cost to the county for independent expert*

*review of the document is greater than the application fee, the applicant shall be billed for the difference and payment shall be made prior to the hearing before the Board of Commissioners.*

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*The Planning and Zoning Department may share such information with other applicants applying for approval under this ordinance or other organizations seeking to locate antennas within the jurisdiction of the governing authority, provided; however, that the Planning and Zoning Department is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.*

Pete Frisina said he had made a change on page 8, and moved the last paragraph under b. as he had failed to move in an earlier amendment.

Jim Graw stated he had a question regarding the wording of the second paragraph that states: “The Planning and Zoning Department “may” share such information with other applicant applying for approval ...” He questioned if that should be reworded to read: “will” and not “may.”

Pete Frisina replied we will be able to use inventory from the first applicant to assist the subsequent applicant with their study.

Jennifer Blackburn of Troutman Sanders, LLP stated the language in question is in almost all tower ordinances and it doesn’t make much difference, as the application and studies, are all public record and could be shared with anyone.

Following a discussion on the wording “may or will”, Pete Frisina stated if a subsequent applicant presented their paperwork for a tower in the near proximity, he would offer the information from the study.

Doug Powell and Bill Beckwith replied, and if we change the wording to “will” it becomes a requirement that “must” be met.

Jennifer Blackburn reiterated it did not pose a problem to leave the wording “may” because it is public record.

- b. A balloon test shall be conducted prior to the public hearings. The balloon shall be flown for a minimum of four (4) daylight hours from the location of the proposed tower, at the requested height. The application shall include the date and time of the balloon test and an alternative date, in case of inclement weather. The initial balloon test shall be held on a Saturday and the alternative date may be held on any day of the week. A sign announcing the dates of the balloon test shall be posted on the

property by the County a minimum of five (5) calendar days prior to the initial balloon test; and

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- c. The applicant shall submit a visual simulation, based on the balloon test, a minimum of seven (7) calendar days prior to the Planning Commission public hearing. Failure to meet this deadline will postpone the tower application to the next scheduled cycle of public hearings. The visual simulation shall consist of color photographs of the proposed site with the existing view and with a depiction of the proposed tower, from a minimum of four (4) distinct quadrants (generally north, east, south, and west), to demonstrate the visual impact on surrounding properties and streets. An Affidavit certifying that the correct location and height of the tower were utilized in the balloon test shall be submitted with the visual simulation photographs.
- 2. *Factors Considered in Public Hearing Applications.* The following factors shall be considered when evaluating a tower application:
  - a. Height of the proposed tower;
  - b. Distance of the tower to residential structures and residential zoning district boundaries;
  - c. Nature of uses on adjacent and nearby properties;
  - d. Topography of the site and its effect on the efficiency of the tower in terms of coverage;
  - d. Surrounding tree coverage and foliage and its effect on the efficiency of the tower in terms of coverage, as well as, its effect on the visual impact of the tower on surrounding properties and streets;
  - e. Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness;
  - f. Proposed ingress and egress; and
  - h. The degree of the tower's compliance with the one (1) statute mile separation (inside the Highway Corridor) or one and one-half (1.5) statute mile separation (outside the Highway Corridor.)

In granting its approval to waive or reduce requirements, the County, through the Board of Commissioners or its designee, may impose conditions that are necessary to minimize the adverse effect of a proposed tower or antenna on adjoining property. A site application shall be submitted within 60 days of the date of approval by the Board of Commissioners or the proposed tower will no longer be deemed a planned tower.

- G. *Site Application Requirements.* All applicants for new tower construction shall include the following:
  - a. completed application forms signed and notarized;
  - b. proof of ownership of the parent tract (latest recorded Warranty Deed);
  - c. site plan prepared by an Engineer, Architect, or Landscape Architect registered by the State of Georgia;
  - d. landscape plans (see General Requirements);
  - e. provide number of carriers based on maximum height of tower;
  - f. ~~provide inventory of Existing or Planned Tower Sites (see General Requirements);~~

- ~~g. a report including all tower specifications and a description of the tower with technical reasons for its design;~~
- ~~h. documentation establishing the structural integrity for the tower's proposed uses;~~

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- ~~i. the general capacity of the tower and information necessary to assure that ANSI standards are met;~~
- ~~j. a statement of intent on whether excess space will be leased; a lease agreement with a minimum of one (1) carrier.~~
- ~~k. a copy of the Determination of No Hazard to Air Navigation from the FAA; and~~
- ~~l. a copy of the Carrier's FCC license application (as applicable for an antenna).~~

Pete Frisina asked the PC to look at page 10 the wording, "a copy of the FCC license application" has been inserted. He explained he had consulted with Commissioner Allen McCarty, who previously worked in the broadcasting and cell industry, for his suggestions. Commissioner McCarty said rather than to ask for the FCC license, just ask for a copy of the FCC license application. He explained once the application is made the FCC is aware of it.

*Site Plan Requirements.* All tower applicants for new towers shall be required to submit a scaled site plan which complies with all applicable requirements of the Development Regulations (see County Code.) Additional information indicated on the site plan shall include:

- a. a signed/sealed survey by a land surveyor registered in the State of Georgia of the parent tract, leased area, and ingress/egress easement, indicating the metes and bounds for each;
- b. total tower height including antennas;
- c. type and design of any tower facility, including location of equipment buildings or cabinets;
- d. distance from nearest off-site residences;
- e. fencing and gate details;
- f. all applicable setbacks for the tower, tower facility, and anchors for guyed tower, as applicable;
- g. distance between towers;
- h. zoning and acreage of parent tract;
- i. zoning of adjacent property; and
- j. other information necessary to assess compliance with this ordinance.

Any information of an engineering nature that the applicant submits, whether civil, mechanical, or electrical, shall be certified by a licensed professional engineer. Site plan submittal shall include completion of a tower application, signed and notarized by both the property owner and the tower company representative/agent.

? **Installing an Antenna on an Existing Structure or Co-location of an Antenna on an Existing Tower.** The following scenarios shall not require submittal of a site application or site plan:

- a. Installing an antenna on an existing structure, so long as said installation adds no more than 20 feet to the height of said existing structure (including buildings, light/utility poles, water towers, or other free standing non-residential structures excluding signs and towers.)
- b. Co-locating an antenna on any existing tower, so long as, said installation does not exceed the maximum height of administrative tower approval for that location and complies with all

- applicable conditions of approval associated with the tower site.
- c. Enlargement of an existing equipment building, or placement of additional equipment cabinets or buildings at a tower site which does not require an enlargement of the existing tower facility.

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Prior to the placement or co-location of any antenna on an existing tower, enlargement of an existing equipment building, or placement of additional equipment cabinets or buildings at a tower site, the applicant shall provide written notice to the Zoning Administrator. The notice shall include a depiction of the location, size, and configuration of such antenna on the existing tower and equipment location within the existing tower facility in reference to an existing site plan and a copy of the FCC license application. ~~a certification from a licensed professional engineer verifying that the antenna will comply with wind load requirements and weight limits for the structure or tower as designed and installed.~~ A Certificate of Zoning Compliance Form shall be issued by the Zoning Administrator upon satisfaction of the above requirements, and any applicable building permits/inspections shall be required.

Pete Frisina explained the wording “on an existing tower” was added following “Prior to the placement or colocation of any antenna.”

- ? **FAA Determination. Prior to the approval and issuance of the certificate of Zoning Compliance, a copy of a FAA Determination including “Does Not Exceed, “Exceeds But Okay”, or “Determination of No Hazard” must be submitted.**

Pete Frisina stated the FAA Determination section was added on page 10, with three (3) determinations: “Does Not Exceed, Exceeds But Okay, or Determination of No Hazard” which must be submitted prior to approval and issuance of the certificate of Zoning Compliance. He said when the applicant is dealing with another agency (FAA) to receive needed information; it is it difficult to tie the applicant to a 30 day window when it may take 60 or 90 days.

- H. **Site Application Timeframes.** The County shall act on applications for co-locations within 90 days, and all other applications within 150 days. **An application shall not be accepted for review unless, at minimum, it includes completed application forms (signed and notarized), proof of ownership of the parent tract (latest recorded Warranty Deed), and site plan prepared (sealed and signed) by an Engineer, Architect, or Landscape Architect registered by the State of Georgia.** The Zoning Administrator has 30 days to determine if an application is complete. If the Zoning Administrator requests additional information within the 30 day review period, the time it takes the applicant to respond will not count towards the 90 or 150 day time limits. Upon notice that an application is incomplete, the applicant has 30 days to submit all information necessary to complete the application. Failure to complete the application in this timeframe shall result in an automatic withdrawal of the application, and **the proposed tower will no longer be deemed a planned tower, and a site application shall not be submitted for the same property for 60 days.**

Jim Graw said he had taken the liberty to restructure section “H”, saying he didn’t change any of the

wording, but restructured the Site Application Timeframe information to make it easier to understand. He passed out copies of his revised wording for the P.C. to review. A copy of said proposed rewording is attached hereto and made a part hereof.

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- I. *Tower Approval Expiration.* Approval of a site application by the applicable departments for a tower shall expire 12 months from the date of approval and will no longer be deemed a planned tower, unless a Certificate of Occupancy has been issued for the tower or the building permit remains active.

Tim Thoms asked questions about the correct alphabetical and numbered indexing etc.

Pete Frisina replied all that would be changed as work was completed on the ordinance. He also stated he was attempting to map all existing towers. He continued that staff has a data base from the FAA that he had imported, but their locations don't perfectly match ours. He added the FAA keeps track of towers over 200', regardless of what they are used for; therefore, some transmission towers for electric lines may be showing up on the FAA site.

Pete Frisina said he also discussed a company called "Site Safe" which is a company that Attorney Jennifer Blackburn has used. He explained they are basically a consultant that looks at sites and does an analysis for a company so they can submit to the FCC, FAA, and the other agencies. He continued he had not been able to reach anyone at "Site Safe." He added that when the FAA does an analysis for air traffic hazards, they only look at public landing fields, not private ones. He distributed a list of private airports and/or airstrips in Fayette County. Said list is attached hereto and made a part hereof.

Bill Beckwith said he questioned what was meant by public, for instance, a private field that is open to the public might require the traffic hazard study for tower application.

Pete Frisina also distributed an article on a court case concerning a Radio Tower application that was rejected by a county government in North Carolina because approval of the application would constitute a hazard to pilots flying into a nearby private airport. Said article is attached hereto and made a part hereof. He reported the county's decision was upheld by the Superior Court Judge in the County and also by the N.C. Court of Appeals. He noted the FAA endorsed and encouraged this type of oversight by the county government over private use airports because they (the FAA) did not have the authority to provide this protection.

Pete Frisina said he would continue to work on an accurate map of all private airstrips.

Tim Thoms asked if the FAA would do a traffic hazard study on a private airstrip.

Pete Frisina responded they would not.

P.C. members then inquired how the county will know if a tower near a private facility is a safety hazard since the county does not employ aviation experts.

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Pete Frisina stated he did not know and he hoped to get help from people like “Safe Site” before determining how to address that. He added the FAA cannot even stop someone from building a tower, (near a public field) if it is deemed a hazard. He explained they deem it unsafe and leave the responsibility of denying the application to the county; however, we will require that the applicant gets the safety determination for all public fields. He reported if the FAA deems the tower a hazard, the county will deny the application. He added we will study both public and private airstrips that the FAA has on the list and not search out additional small private strips. He stated the strips/fields are located by city listings, which simply means that is the municipality closest to the strip/field. He said staff would continue working on the ordinance and bring it back before the PC for additional review.

\* \* \* \* \*

**7. Discussion of proposed amendments to the Fayette County Code of Ordinances, Chapter 20. Zoning Ordinance regarding: Illegal Nonconforming Lots.**

Pete Frisina stated that the following had been presented to the BOC at their workshop:

To: Board of Commissioners  
From: Pete Frisina, Director of Community Development  
Date: November 22, 2011  
Subject: Illegal Nonconforming Lots

On October 5, 2011, staff met with the Board of Commissioners (BOC) to discuss the issue of illegal nonconforming lots and the development of a policy where, under certain circumstances, these lots may be legitimized. The BOC asked staff to research the issue and seek guidance from the Planning Commission and County Attorney.

Three (3) alternatives were proposed by staff as follows:

- Alt. 1.* Create criteria in the Land Use Plan for the rezoning of an illegal nonconforming lot which does not comply with Land Use Plan. The goal is not to weaken the integrity of the Land Use Plan so it can be used against the County in other rezoning requests.
- Alt. 2.* Create Legal Nonconforming Status (LNS) sub-categories in the Zoning Ordinance for the rezoning of an illegal nonconforming lot. For example, if the lot is zoned A-R then you would request to rezone from A-R to A-R LNS.
- Alt. 3.* Create a procedure and criteria for the Zoning Board of Appeals to legitimize an illegal nonconforming lot through the variance process.



The County Attorney recommended Alt. 2. The Planning Commission concurred with his recommendation. It was also advised that the Land Use Element text be amended to address this procedure.

Alt. 2 would be handled through the standard rezoning process with additional factors to be considered in the review of the rezoning request. These proposed factors would include:

1. What is the history of the property, how and when was it made nonconforming;
2. Is the property vacant or developed;
3. Has the County issued any building permits for the property;
4. How many changes of ownership have taken place since the lot was made nonconforming;
5. Is the petitioner a bona-fide purchaser in good faith;
6. Are there any possible solutions to remediate the nonconformance; and
7. Has the owner exhausted all options, including legal action, against the seller?

Pete Frisina presented the proposed amendments as follows:

### ARTICLE III. DEFINITIONS

**Bona-fide purchaser in good faith.** *A person who buys a property in good faith, without the knowledge of any illegal non-conformances.*

### ARTICLE VII. CONDITIONAL USES, NONCONFORMANCES, TRANSPORTATION CORRIDOR OVERLAY ZONE, AND COMMERCIAL DEVELOPMENT STANDARDS

#### Sec. 7-2. Nonconformances.

A. *Nonconforming Lots.* (Place as last paragraph under A.)

**Consideration for the Rezoning of Illegal Nonconforming Lots.** *Any illegal nonconforming lot may be considered for rezoning to a Legal Nonconforming Status (LNS) sub-category of the same zoning district. For the purposes of this section, an illegal nonconforming lot is a lot which does not comply with the minimum lot area (acreage), minimum lot width at the building line, and/or the minimum required road frontage; whereas, a variance cannot be granted for said deficiencies by the Zoning Board of Appeals (see Article IX.) After approval of the rezoning, any existing illegal nonconforming structure(s) which are to remain will need a variance authorized by the Zoning Board of Appeals (see Article IX.) An illegal nonconforming use is prohibited. The petition for rezoning to a LNS sub-category of the same zoning district shall be evaluated per the following factors, in addition to those listed under Article XI. Policies, Procedures and Standards Governing Amendment:*

1. **That the applicant is a bona-fide purchaser in good faith of said illegal nonconforming lot.**

2. *The issuance of building permit(s) for any structure(s).*

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3. *The history of the subject property in terms of date of the nonconformity, the chain of ownership, and relationship to abutting properties.*  
4. *Development status of the property (vacant or existing structures.)*  
5. *All initiatives taken by the applicant to remedy the nonconformance including, legal action against the seller and/or acquisition of adjacent property.*  
*Where the dimensional requirements of the zoning district cannot be met in terms of the placement of improvements, a variance authorized by the Zoning Board of Appeals shall be required.*

Summary of BOC Workshop Comments dated 01/04/12

*County Attorney:*

- \* In the past, Clerk of Superior Court was allowing recordation of plats without County approval.
- \* Establish an effective date for this section so parcels created after said date would not be able to apply for a rezoning because we want to stop this practice and not encourage the creation of illegal lots with this process.
- \* The only two factors that we should consider is are you a bona-fide purchaser in good faith (factor #1) and did the county condone this in some way such as issuing a building permit (factor #2).
- \* If a property owner created the problem they should not be given consideration.
- \* The county needs to discourage the creation of illegal lots and not create a process to ask for forgiveness later
- \* When we say a bona-fide purchaser in good faith we mean someone who purchased property without knowledge of a non-conformance that's why I think there are only two criteria the county is are they a bona-fide purchaser in good faith and need to consider the County's actions, especially if a building permit was issued. This is not a chosen route but a necessity.
- \* The county needs to outline what documentation we need for the application to determine if they are a bona-fide purchaser in good faith such as if a mortgage was approved for the property.
- \* Establish as tight of criteria as possible for objectivity and not be so subjective.

*Commissioner Horgan:*

- \* Approval to LNS category would still require compliance with all applicable regulations.

*Commissioner Brown:*

- \* We are placing liability on the County when it should be on the property owner. There could be recourse on the County if some were approved and others were denied. Making decisions on a case by case basis could result in a law suit funded by the County.
- \* If the property owner has not "jumped through all seven (7) hoops", is this a reason for denial?
- \* It is the property owner's responsibility to do his due-diligence to purchase a legitimate piece of

property that meets the criteria. Georgia is a “Buyer Beware” state.

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- \* Cautioned someone may be able to take advantage of the system by buying illegal nonconforming lots and building on them which may not be what the County wants.
- \* Require an amendment on the Warranty Deed.
- \* If the County created the problem, then the County should give that consideration.

*Commissioner McCarty:*

- \* What is a reasonable cut-off date?

*Commissioner Hearn:*

- \* What happens if a parcel is made illegally nonconforming after the effective date?
- \* I am concerned with helping people who purchased a lot and through no fault of their own have a non-conforming lot.
- \* I want to discourage the creation of these lots but I want to be fair to people that get caught in that trap.
- \* Use caution and not open the flood gates.
- \* If I am dealing with the original property owner and not two or three generations of property owners down the road I would less likely to be helpful to that property owner as opposed to subsequent property owners.

Pete Frisina stated the County Attorney said, in his opinion, out of the five (5) items listed in the ordinance, factors one (1) and two (2) are the most important items to consider. He continued that the County Attorney explained when a buyer purchases property in Georgia, it is up to the buyer to do their due diligence. He added it is very difficult to go back after the fact and say you were not aware of the problem with the property and be successful with your argument, since due diligence is the responsibility of the buyer. He said the County Attorney suggested a cut-off date, so the county wouldn't create a problem by giving people an option to get relief from future actions creating illegal lots.

Al Gilbert said that he had a problem with a cut-off date because these mistakes will still occur in the future. He stated some of these mistakes happen when the banks are selling foreclosed properties and the buyer thinks because he/she is dealing with the bank the lot is legal, when the bank or Closing Attorney is only looking for encumbrances against the property.

Pete Frisina stated when someone takes a property survey to Superior Court to be recorded, the property survey is rejected and the person is instructed to get approval from P& Z and this catches a lot of mistakes, but land could still be transferred by deed only without a plat or survey attached to it and this can cause another illegal lot to be created.

The PC and staff discussed the following issues regarding illegal nonconforming lots:

- 1) How important is the date the non-conformance occurred;
- 2) Was the property purchased in good faith and how do you determine this;
- 3) What about inherited properties that are nonconforming;
- 4) Who should be given consideration, the second, third or fourth buyer of a non-conforming lot;
- 5) A home that burns or is damaged on a non-conforming lot cannot be rebuilt;
- 6) What if the county has already erroneously issued permits on a non-conforming lot;
- 7) How does the county handle incorrect surveys or deeds;
- 8) How do you prevent someone from gaming the system and purposely creating nonconforming lots;
- 9) How much responsibility should be placed on the buyer to purchase adjacent property, if possible, to conform;
- 10) These rezoning requests will have to be evaluated on a case by case basis, like any other rezoning;
- 11) Do we make a distinction between developed and undeveloped nonconforming lots, giving more consideration to developed lots?

Pete Frisina explained we could rezone anyone into compliance; however, the problem is when the rezoning will go against the Land Use Plan and we don't want to go against the Land Use Plan. He said Alternative 2 provided a mechanism to keep the base nonconforming zoning with a suffix.

Doug Powell asked how many problems with nonconforming lots does county staff see or how many possible illegal nonconforming lots are present in the county.

Pete Frisina explained it is difficult to know, because the county does not have a good way to ascertain how many illegal nonconforming lots have been created.

The PC stated they do not want to create a policy that encourages an owner of a 10 acre A-R tract to knowingly subdivide that property into five (5) two (2) acre illegal nonconforming lots, sell them and then each property owner apply for a rezoning to legitimize the illegal nonconforming lots.

Doug Powell stated he would prefer that we continue to not allow any permits on a vacant illegal nonconforming lot. He said he didn't think we should allow anything to be built on a vacant illegal nonconforming lot, thus we would only have to deal with the ones that have been built on.

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PC and staff discussed the possibility of purchasing adjacent land to make the lot conform. The problems occur when the neighbor would make their own lot nonconforming by selling, or the neighbor, knowing how much the buyer needs the land, would inflate the price making it so expensive the buyer could not afford to purchase it.

Al Gilbert asked if staff had been able to compare how other jurisdictions handled these problems.

Pete Frisina stated staff had not been able to find this information.

Al Gilbert expressed concern over what we should do with illegal nonconforming lots that may be less than one (1) acre, our minimum lot size, and these could not be rezoned into conformity.

Staff and PC discussed problems created when people in foreclosure or trying to borrow money will take out a security loan on only a portion of the property and the house; then creating a problem with the lot size. The bank allows them to do this with no knowledge of zoning or problems it may create.

Pete Frisina stated staff would continue to work on this and bring it back to the PC for further discussion.

\* \* \* \* \*

Pete Frisina stated that he was discussing the SR 74 South, SR 85 South, and Padgett Road intersection at the BOC Workshop to determine if they want staff to study the Land Use Plan in this area. He stated that staff and the PC had said they would study that area once the intersection improvements were completed and those improvements have been completed.

\* \* \* \* \*

Chairman Thoms asked if there was any further business. Hearing none, Al Gilbert made a motion to adjourn the Public Meeting/Workshop. The motion unanimously passed 5-0. Members voting in favor of adjournment were: Chairman Thoms, Al Gilbert, Bill Beckwith, Jim Graw, and Doug Powell. The Public Meeting/Workshop adjourned at 8:38 P.M.

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**PLANNING COMMISSION**  
**OF**  
**FAYETTE COUNTY**

**ATTEST:**

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**TIM THOMS**  
**CHAIRMAN**

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**PHYLLIS WILLIAMSON**  
**P&Z ADMINISTRATIVE SECRETARY**  
**FOR ROBYN S. WILSON, PC SECRETARY**